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holding that intrastate freight rates imposed by a state railroad commission may be changed by the Interstate Commerce Commission when they interfere with the proper regulation of interstate commerce, indicates a possible solution of this difficulty.<sup>6</sup>

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## RECENT CASES

AGENCY — NATURE AND INCIDENTS OF RELATION — FATHER'S LIABILITY FOR TORTS OF SON. — The plaintiff was injured by the negligent running of the defendant's automobile by the defendant's son. The son habitually drove the car with his father's consent, and at the time of the accident was using it entirely for his own pleasure.

*Held*, that the defendant is liable on the principles of agency. *Davis v. Littlefield*, 81 S. E. 487 (S. C.).

*Held*, that the defendant is liable because an automobile is a dangerous instrumentality. *Hays v. Hogan*, 165 S. W. 1125 (Mo.).

*Held*, that the defendant is not liable. *Heissenbuttel v. Meagher*, 162 N. Y. App. Div. 752.

For a discussion of the principles involved, see NOTES, p. 91. See also 2 HARV. L. REV. 734.

AGENCY — PRINCIPAL'S LIABILITY FOR ACTS OF INDEPENDENT CONTRACTOR — LIABILITY FOR EXPLOSIVES. — The defendant hired an independent contractor to load a ship with dynamite. By the negligence of a servant of the independent contractor, the dynamite exploded, and the plaintiff was injured. *Held*, that the defendant is not liable. *State of Maryland v. General Stevedoring Co.*, 213 Fed. 51 (Dist. Ct., Md.).

The general rule that the employer is not liable for the negligence of an independent contractor is not applicable where the work, if done in the ordinary method, would be a nuisance. *Woodman v. Metropolitan R. Co.*, 149 Mass. 335, 21 N. E. 482. But the modern necessity for the manufacture and transportation of explosives has led the courts to refuse to impose absolute liability of this sort on the handlers of explosives. *The Ingrid*, 195 Fed. 596. The employer may also be held when the work undertaken by the independent contractor is inherently or intrinsically dangerous. *Doll v. Ribetti*, 203 Fed. 593; *Bower v. Peate*, L. R. 1 Q. B. D. 321. But the work must be so dangerous that injury probably will, and not merely may, result to third persons unless precautions are taken. *Davis v. Whiting & Son Co.*, 201 Mass. 91, 87 N. E. 199; *Bibb's Adm'r v. Norfolk & Western R. Co.*, 87 Va. 711, 725, 14 S. E. 163, 168. So if the danger lies solely in the possibility of some one doing an indefinite number of careless acts, the work will not be deemed intrinsically perilous. *Davis v. Whiting & Son Co.*, *supra*; *Engel v. Eureka Club*, 137 N. Y. 100, 32 N. E. 1052. Whether the transportation of dynamite is inherently dangerous is a question of some nicety, and the court was doubtless guided by a consideration of modern expediency, as well as by scientific facts, in concluding that it is not.

ASSAULT AND BATTERY — CIVIL LIABILITY — DEFENSES: CONSENT OF VICTIM OF STATUTORY RAPE. — To have carnal knowledge of a female less than sixteen years of age, not the wife of the perpetrator, was made rape by statute. COMP. LAWS, OKLA. (1909), § 2414; LORD'S OREGON LAWS, § 1912.

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<sup>6</sup> The railroads in official classification territory have already filed with the Commission new tariffs increasing interstate passenger fares.

The plaintiff, a consenting victim of such a crime, sues the perpetrator. *Held*, that the plaintiff may recover. *Priboth v. Haveron*, 139 Pac. 973 (Okla.); *Hough v. Iderhoff*, 139 Pac. 931 (Ore.).

Both courts argue that consent is rendered legally impossible. This seems questionable. Although common law rape involves non-consent, it does not follow that in a statutory crime of the same name consent is legally non-existent while present in fact. See *Hardin v. State*, 39 Tex. Cr. R. 426, 431, 46 S. W. 803, 806. It is less fictitious and equally in harmony with the wording of the statutes cited to say that consent is made immaterial to criminal liability. The more satisfactory basis for the result is the reasoning underlying the well-established doctrine that the consent of either participant in an illegal mutual combat is no defense to an action by the other. *Bell v. Hansley*, 3 Jones (N. C.) 131; *Barholt v. Wright*, 45 Oh. St. 177, 12 N. E. 185. *Contra*, *Lykins v. Hamrick*, 144 Ky. 80, 137 S. W. 852. This rule appears to rest upon considerations of policy which render it supposedly inadvisable that consent to such a breach of the peace should remove all civil liability. *Stout v. Wren*, 1 Hawks (N. C.) 420. Such a conception is anomalous in civil law, where consent is normally a complete defense. But the courts have probably been influenced by the criminal-law principle that consent does not excuse an act which tends to a breach of the peace, or severe bodily harm, unless it negatives an essential element of the crime. If the doctrine of these mutual combat cases be accepted, as it must on authority, it seems *a fortiori* sound to allow an action to the immature victim of such a crime as that in the principal cases, where there has been an express legislative declaration of policy.

**ATTORNEYS — RELATION BETWEEN ATTORNEY AND CLIENT — MEASURE OF DAMAGES FOR DISCHARGE WITHOUT CAUSE.** — An attorney was employed under a written contract to procure certain awards, his fees to be a percentage of the recovery. After having made material progress, he was discharged without cause. The client employed another lawyer who procured the awards. The original attorney now sues on the contract. *Held*, that he may recover the agreed compensation. *Martin v. Camp*, 161 N. Y. App. Div. 610.

A client may discharge his attorney at any time without cause. *In re Prospect Ave.*, 85 Hun 257, 32 N. Y. Supp. 1013. But such action merely dissolves the relation, and the client remains liable for the breach of the contract of retainer. *Texas v. White*, 10 Wall. (U. S.) 483. Where the fee is a fixed amount, or if contingent, has been rendered certain by subsequent events, as in the principal case, the attorney may recover the agreed compensation in full. *Carlisle v. Barnes*, 102 N. Y. App. Div. 573, 92 N. Y. Supp. 917; *Webb v. Trescony*, 76 Cal. 621, 18 Pac. 796. This measure of damages involves no departure from the usual rule of damages for breach of contract of employment, for it depends upon the impossibility of calculating the value of the contract to the attorney in any other way. Thus where the attorney would have been put to certain inevitable expenses in carrying out the rest of the contract, his recovery is reduced by that amount. *Brodie v. Watkins*, 33 Ark. 545. On the other hand, if the claim proves worthless after the discharge, an attorney engaged on a percentage basis is only entitled to nominal damages. *Swinnerton v. Monterey Co.*, 76 Cal. 113, 18 Pac. 135. But if the client recovers through the new counsel, or compromises the claim, it seems that the original attorney may sue at his option for the reasonable value of services rendered, instead of on the contract. *French v. Cunningham*, 149 Ind. 632, 49 N. E. 797.

**BAILMENTS — BAILOR AND BAILEE — LIABILITY OF BAILEE FOR ACTS OF SERVANT.** — In pursuance of its contract to call for the plaintiff's car and care for it in its garage, the defendant company sent an employee for the car. This servant took it on a frolic of his own, and while acting outside the scope of his